

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JESUS ESTEVEZ,

Petitioner,

UNITED STATES ATTORNEY'S
OFFICE FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
FEDERAL BUREAU OF PRISONS,
WESTERN REGIONAL OFFICE, et al.,

Respondents.

Case No.: 15-cv-02941-AJB-JLB

ORDER:

- (1) DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT;**
- (2) GRANTING RESPONDENTS' CROSS-MOTION FOR SUMMARY JUDGMENT; AND**
- (3) DIRECTING THE CLERK OF COURT TO CLOSE THIS CASE**

(Doc. Nos. 45, 52)

Pending before the Court are both Petitioner Jesus Estevez (“Estevez”) and Respondents the United States Attorney’s Office for the Southern District of California (“USAO”), the Federal Bureau of Prison, Western Regional Office (“BOP”), and the United States Marshal for the Southern District of California’s (“USMS”) (collectively referred to as “Respondents”) motions for summary judgment. (Doc. Nos. 45, 52.) Both parties filed oppositions. (Doc. Nos. 55, 57.) On August 16, 2017, Estevez was granted permission to file a Sur-Reply, which was filed on September 7, 2017. (Doc. Nos. 59, 60,

1 62.) Pursuant to Civil Local Rule 7.1.d.1, the Court finds the matters suitable for
2 determination on the papers and without oral argument. For the reasons stated in more
3 detail below, the Court **DENIES** Estevez's motion for summary judgment and **GRANTS**
4 Respondents' cross-motion for summary judgment.

5 **I. BACKGROUND**

6 The contours of Estevez's complaint are simple—Estevez alleges that he has been
7 denied access to records under the Freedom of Information Act ("FOIA"), the Privacy Act,
8 and the California Public Records Act. (Doc. No. 33 at 5.)¹ The specific events leading up
9 to the institution of this action are as follows.

10 On or around December 3, 1999, Estevez was transferred from Salinas State prison
11 to federal custody in association with Grand Jury Proceedings in the Southern District of
12 California.² (Doc. No. 33 at 6; Doc. No. 42-3 at 3.) Estevez was in state prison after being
13 convicted during a jury trial of the following crimes in San Diego Superior Court Case
14 Number SCD132864: (1) Assault on a Peace Officer in violation of Cal. Penal Code §
15 245(d)(2); (2) False Imprisonment of a Hostage in violation of Cal. Penal Code § 210.5;
16 (3) Three Counts of Forcible Rape in violation of Cal. Penal Code § 261(a)(2); (4) Forcible
17 Oral Copulation in violation of Cal. Penal Code § 288a(c); (5) Assault with a Semi-
18 Automatic Firearm in violation of Cal. Penal Code § 245(b); and (6) Child Abuse in
19 violation of Cal. Penal Code § 273a(a). (Doc. No. 52-1 at 11.) Estevez was sentenced to
20 forty-three years and four months in prison. (*Id.*)

21 **A. Inquiries with the Federal Bureau of Prisons**

22 On February 5, 2014, Estevez sent a letter to the FOIA section of the BOP requesting

23
24 ¹ Page numbers refer to the CM/ECF page number and not the number listed on the original
25 document.

26 ² Estevez contends that he was informed of his transfer from foreign government agents,
27 who he later discovered were found dead. (Doc. No. 33 at 6, 25.) The Court notes that the
28 article attached to Estevez's first amended complaint regarding these "agent deaths" refers
to the death of three Mexican drug agents who were sent to Baja, California to investigate
the "flow of heroin, cocaine and other drugs smuggled into the United States." (*Id.* at 25.)

1 documents pertaining to him. (Doc. No. 42-2 at 3.) On March 20, 2014, the BOP informed
2 Estevez that his request had been received and was being forwarded to processing under
3 Request Number 2014-05306. (*Id.* at 4; Doc. No. 52-1 at 11.) Subsequently, in a letter
4 dated September 26, 2014, the BOP informed Estevez that they had located ninety-six
5 pages of responsive records of which fifty-six were released in their entirety, thirty pages
6 were released with certain information redacted, and ten pages were withheld in their
7 entirety. (Doc. No. 42-2 at 7.) In regards to the ten pages, the BOA stated that it withheld
8 these documents from full disclosure under the following exemptions: 5 U.S.C.
9 §552(b)(7)(C) and (b)(7)(F). (*Id.*)

10 On October 2, 2014, Estevez filed an appeal in regards to the ten documents that
11 were withheld in their entirety. (*Id.* at 8.) Thereafter, on April 13, 2015, the Office of
12 Information Policy (“OIP”) responded to Estevez stating that it affirmed the BOP’s actions
13 as it had also determined that the records Estevez sought were excused from disclosure
14 under exemptions 5 U.S.C. § 552(b)(7)(C) and b(7)(F). (*Id.* at 10.)

15 **B. Inquiries with the United States Marshal Service**

16 Thereafter, on April 18, 2015, Estevez sent a letter to the USMS requesting
17 documents pertaining to him in Grand Jury Proceedings 99-GJ-0131. (Doc. No. 42-1 at 1–
18 2.) On October 19, 2016, the USMS, by letter, notified Estevez that they had conducted a
19 search for responsive records to his request and found a total of two pages. (*Id.* at 8.)
20 However, the USMS decided to release one page with redactions based upon exemption 5
21 U.S.C. § 552(b)(7)(C). (*Id.*)

22 On November 8, 2016, the OIP received a letter from Estevez challenging the
23 USMS’ decision to redact information from the single page while also questioning the
24 adequacy of the USMS’ search. (*Id.* at 10–11.) On January 8, 2017, the OIP affirmed the
25 USMS’ actions in withholding certain information and found that the USMS conducted an
26 adequate and reasonable search for Estevez’s records. (*Id.* at 14.)

27 **C. Inquiries with the United States Attorney’s Office**

28 Estevez also sent a letter to the Executive Office of the United States Attorneys

1 Freedom of Information and Privacy Staff (“EOUSA”) on May 19, 2015, requesting
2 documents pertaining to him in Grand Jury Proceeding 99-GJ-013. (Doc. No. 42-3 at 1–2;
3 Doc. No. 52-1 at 13.) After an exchange of several letters, on August 21, 2015, the EOUSA
4 informed Estevez that their records search revealed no responsive documents regarding his
5 request. (Doc. No. 42-3 at 24.)

6 On September 15, 2015, the OIP received an appeal from Estevez challenging the
7 adequacy of the previous search. (*Id.* at 25–26.) Subsequently, on October 26, 2015, the
8 OIP, by mail, informed Estevez that they found that the EOUSA’s search was adequate
9 and reasonable. (*Id.* at 28.)

10 On May 11, 2016, Estevez wrote a letter to the USAO requesting documents under
11 FOIA and the California Records Act. (*Id.* at 30.) Specifically, Estevez argued that he had
12 been falsely convicted and that the “government agencies” were allowing agents to abuse
13 their authority under color of law. (*Id.* at 31.) On May 24, 2016, the USAO sent Estevez a
14 letter acknowledging receipt of his request and directing him to process any further
15 inquiries with the EOUSA. (*Id.* at 32.)

16 **II. LEGAL STANDARD**

17 A. Summary Judgment

18 Summary judgment is appropriate under Federal Rule of Civil Procedure 56 if the
19 moving party demonstrates the absence of a genuine issue of material fact and entitlement
20 to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact
21 is material when, under the governing substantive law, it could affect the outcome of the
22 case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if a
23 reasonable jury could return a verdict for the nonmoving party. *Id.*

24 A party seeking summary judgment bears the initial burden of establishing the
25 absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. The moving
26 party can satisfy this burden in two ways: (1) by presenting evidence that negates an
27 essential element of the nonmoving party’s case; or (2) by demonstrating the nonmoving
28 party failed to establish an essential element of the nonmoving party’s case on which the

1 nonmoving party bears the burden of proving at trial. *Id.* at 322–23. “Disputes over
2 irrelevant or unnecessary facts will not preclude a grant of summary judgment.” *T.W. Elec.*
3 *Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

4 Once the moving party establishes the absence of a genuine issue of material fact,
5 the burden shifts to the nonmoving party to set forth facts showing a genuine issue of a
6 disputed fact remains. *Celotex Corp.*, 477 U.S. at 330. When ruling on a summary
7 judgment motion, the court must view all inferences drawn from the underlying facts in
8 the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith*
9 *Radio Corp.*, 475 U.S. 574, 587 (1986).

10 B. Summary Judgment in a FOIA Case

11 “Summary judgment is the procedural vehicle by which nearly all FOIA cases are
12 resolved.” *Nat’l Res. Def. Council v. U.S. Dep’t of Defense*, 388 F. Supp. 2d 1086, 1094
13 (C.D. Cal. 2005) (citation omitted). However, the typical standard for summary judgment
14 is not sufficient because the facts in a FOIA case are rarely in dispute. *Minier v. Cent.*
15 *Intelligence Agency*, 88 F.3d 796, 800 (9th Cir. 1996). Instead, the standard for summary
16 judgment in a FOIA case is a two-stage inquiry. *Los Angeles Times Commc’n, LLC v. Dep’t*
17 *of the Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006).

18 First, the court must determine if the agency has satisfied its burden in proving that
19 it fully discharged its obligations under FOIA. *Zemansky v. EPA*, 767 F.2d 569, 571 (9th
20 Cir. 1985) (citation omitted). To establish this, the agency can demonstrate that it has
21 “conducted a search reasonably calculated to uncover all relevant documents.” *Id.* (internal
22 quotation marks omitted). However, the question is not whether any relevant documents
23 could exist, but rather whether the agency’s search was adequate, measured by a
24 reasonableness standard. *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir.
25 1983).

26 Second, if the court determines that the initial burden has been met, the next step is
27 to examine whether the agency has established that the information that it did not disclose
28 falls within one of the nine FOIA exemptions. *See* 5 U.S.C. § 552(a)(4)(B); *see also* U.S.

1 *Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991) (holding that the burden of the agency to
2 justify the withholding of any requested documents “remains with the agency when it seeks
3 to justify the redaction of identifying information in a particular document as well as when
4 it seeks to withhold an entire document.”). Thus, as a whole, to prevail on summary
5 judgment in a FOIA proceeding, where the underlying facts and inferences are construed
6 in favor of the FOIA requester, an agency must prove that it has met both of the foregoing
7 burdens. *Nat’l Res. Def. Council*, 388 F. Supp. 2d at 1095.

8 **III. DISCUSSION**

9 Estevez contests both the adequacy of Respondents’ efforts to perform a reasonable
10 search as well as Respondents’ decision to redact certain portions of the documents found.
11 (See generally Doc. No. 45.) Respondents challenge Estevez on each of these points. (See
12 generally Doc. No. 52.)

13 FOIA’s “core purpose” is to inform citizens “what their government is up to.” *U.S.*
14 *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)
15 (citation omitted). FOIA stems from Congress’ 1966 revision of the public disclosure
16 section of the Administrative Procedure Act. *Dep’t of Air Force v. Rose*, 425 U.S. 352, 360
17 (1976). This revision was called for because at that time no statute effectively provided for
18 disclosure of information to the public by the “hundreds of [governmental] departments,
19 branches, and agencies which are not directly responsible to the people” *SDC Dev.*
20 *Corp. v. Mathews*, 542 F.2d 1116, 1119 (9th Cir. 1976). More specifically, since its
21 inception, the Supreme Court has repeatedly stressed that the Act “seeks to permit access
22 to official information long shielded unnecessarily from public view and attempts to create
23 a judicially enforceable public right to secure such information from possibly unwilling
24 official hands.” *EPA v. Mink*, 410 U.S. 73, 80 (1973), superseded by statute on other
25 grounds by *C.I.A. v. Sims*, 471 U.S. 159 (1985).

26 Further, the Supreme Court has interpreted FOIA broadly, requiring “a philosophy
27 of full agency disclosure” except where specifically exempted by the Act. *Id.* at 80 n.6. In
28 total, there are nine statutory exemptions to the Act, each of which protects against the

1 disclosure of a specific set of sensitive government information. *See* 5 U.S.C. § 552(b)(1)–
2 (9). These exemptions must be “narrowly construed” so as not to undermine the Act’s basic
3 purpose of public access. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989).

4 However, even when documents fall within one of the nine enumerated exemptions
5 under FOIA, section 552(b) still requires disclosure of “[a]ny reasonably segregable
6 portion of a record . . . after deletion of the portions which are exempt[.]” 5 U.S.C. § 552(b).
7 The Ninth Circuit has specifically established that “it is reversible error for a district court
8 ‘to simply approve the withholding of an entire document without entering a finding on
9 segregability, or the lack thereof.’” *Los Angeles Times Commc’n, LLC*, 442 F. Supp. 2d at
10 892 (citing *Church of Scientology of Cal. v. U.S. Dep’t of Army*, 611 F.2d 738, 744 (9th
11 Cir. 1979)).³ Thus, “[n]on-exempt portions of a document must be disclosed unless the
12 Court finds that they are ‘inextricably intertwined with exempt portions’ to such a degree
13 that separating the two would ‘impose significant costs on the agency and produce an
14 edited document with little informational value.’” *Los Angeles Times Commc’n*, 442 F.
15 Supp. 2d at 893 (citing *Willamette Indus., Inc. v. United States*, 689 F.2d 865, 867–68 (9th
16 Cir. 1982)).

17 A. Adequacy of the Searches

18 Respondents state in detail the alleged adequacy of all three searches completed by
19 them in relation to Estevez’s various FOIA requests. (Doc. No. 52-1 at 17–32.) In
20 opposition, Estevez contends that Respondents have failed to carry their burden in this
21 respect and that the declarations produced by them are conclusory and unhelpful. (Doc.
22 No. 55 at 13–14.)

23 “An agency can demonstrate the adequacy of its search through ‘reasonably detailed,
24 nonconclusory affidavits submitted in good faith.’” *Hamdan v. U.S. Dep’t of Justice*, 797
25 F.3d 759, 770 (9th Cir. 2015) (citing *Zemansky*, 767 F.2d at 571). In fact, affidavits
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28 ³ *Overruled on other grounds by Animal Legal Defense Fund v. U.S. Food & Drug Admin.*,
836 F.3d 987 (9th Cir. 2016).

1 submitted by an agency to demonstrate the adequacy of its search and responses to FOIA
2 requesters are presumed to be made in good faith. *Ground Saucer Watch, Inc. v. CIA*, 692
3 F.2d 770, 771 (D.C. Cir. 1981). Moreover, “the failure to produce or identify a few isolated
4 documents cannot by itself prove the searches inadequate.” *Lahr v. Nat'l Transp. Safety*
5 *Bd.*, 569 F.3d 964, 988 (9th Cir. 2009). Here, Respondents have met their evidentiary
6 burden in demonstrating the adequacy of their searches.

7 First, as to the BOP’s search, Respondents provide the declaration of Robin Carl, an
8 employee of the BOP for over 12 years and a FOIA Specialist for the Western Regional
9 Counsel’s Office since August 2016. (Carl. Decl. Ex. 3, Doc. No. 52-3 ¶ 1.) Ms. Carl
10 testifies that though she did not send out the request for the responsive records, it was
11 determined by the person involved that any relevant documents would be in Estevez’s
12 Inmate Central File at MCC San Diego. (*Id.* ¶ 9.) The request was then sent to Senior
13 Counsel Nellie T. Klein, who then forwarded the request to the Case Management
14 Coordinator. (*Id.*) On September 17, 2014, after receipt of Estevez’s Inmate Central File,
15 the ninety-six pages of documents from the file were scanned and sent to the Western
16 Regional Counsel’s Office. (*Id.*)

17 Second, in regards to the search completed by the USMS, Respondents provide the
18 declaration of William E. Bordley, an Associate General Counsel and a FOIA Officer of
19 the USMS. (Bordley Decl. Ex. 4, Doc. No. 52-4 ¶ 1.) Mr. Bordley testified that on April
20 18, 2015, Estevez made a request under FOIA. (*Id.* ¶ 2.) While processing Estevez’s
21 request, it was determined that if documents responsive to his request existed, they would
22 be found in two systems of records: the Prisoner Processing and Population
23 Management/Prisoner Tracking System or the Warrant Information Network. (*Id.* ¶ 5.) A
24 search was then placed in both of these systems using Estevez’s name, social security
25 number, and registration number. (*Id.*) In total, the search terms revealed two pages of
26 material. (*Id.*) The two pages, one of which was released in full and the other released with
27 redactions, were sent by mail to Estevez on October 19, 2016. (*Id.* ¶ 7.)

28 Finally, as to the USAO’s search, Respondents produce the declaration of Crystaline

1 Smith, a Supervisory Paralegal Specialist for the Civil Division, USAO. (Smith Decl. Ex.
2 5, Doc. No. 52-5 ¶ 1.) One of Ms. Smith's responsibilities includes coordinating FOIA
3 requests. (*Id.*) Ms. Smith testified that on or about July 6, 2015, her office received
4 Estevez's FOIA request. (*Id.* ¶ 2.) According to Ms. Smith, the USAO uses a computerized
5 docketing/case management system known as LIONS to track cases and matters for the
6 entire district. (*Id.* ¶ 3.) On or about July 10, 2015, Ms. Smith conducted a LIONS case
7 search for Estevez's grand jury case number 99GJ0131 and for any documents relating to
8 Estevez. (*Id.* ¶ 4.) Her search ultimately resulted in no documents. (*Id.*) Ms. Smith then
9 contacted the Grand Jury Coordinator, Norma Vaughn, who has access to all of the systems
10 of records related to grand jury proceedings. (*Id.* ¶ 5.) Ms. Vaughn then conducted a search
11 for Ms. Smith and also found no documents pertaining to Estevez's FOIA request. (*Id.* ¶
12 6.)

13 Despite Estevez's belief that the declarations provided by Respondents are
14 conclusory, (Doc. No. 55 at 13–14), the Court concludes the opposite. Presently, the Court
15 finds that each declaration produced by Respondents adequately details the processes and
16 procedures by which each agency undertook the search for records responsive to Estevez's
17 requests. Additionally, each declaration describes in detail the databases that were searched
18 and the search terms used. *See Citizens Comm'n on Human Rights v. FDA*, 45 F.3d 1325,
19 1328 (9th Cir. 1995) (“[A]ffidavits describing agency search procedures are sufficient for
20 purposes of summary judgment only if they are relatively detailed in their description of
21 the files searched and the search procedures, and if they are nonconclusory and not
22 impugned by evidence of bad faith.”) (citation omitted).

23 As to the USAO's search, which returned no responsive documents, the Court notes
24 that Respondents illuminate that the USAO has a 10-year record retention policy. (Doc.
25 No. 52-1 at 26; Smith Decl. ¶ 8.) Thus, if any of the relevant records to Estevez's FOIA
26 request previously existed, they would have been destroyed as Estevez's grand jury
27 proceeding was in or around 1999 and Estevez's request was filed in 2015, nearly 16 years
28 later. (Smith Decl. ¶ 8.)

1 Estevez argues that the USAO's search was inadequate because the declaration did
2 not provide more details on the e-mail sent to Norma Vaughn. (Doc. No. 55 at 18.)
3 Additionally, Estevez contends that the declarant did not provide any information on the
4 person that destroyed or archived the records, nor did they explain the LION computer
5 system. (*Id.*) Unfortunately, the type of specificity requested by Estevez is not required
6 under the applicable FOIA standards established through case law from this circuit.
7 Instead, the Court reiterates that a search under FOIA is based off of a standard of
8 adequacy, not perfection. *See Our Children's Earth Found. v. Nat'l Marine Fisheries Serv.*,
9 85 F. Supp. 3d 1074, 1082 (N.D. Cal. 2015) ("To comply with the FOIA, an agency must
10 conduct a search reasonably calculated to uncover all relevant documents.") (internal
11 quotation marks omitted) (emphasis added); *see also McCash v. C.I.A.*, No. 5:15-cv-02308-
12 EJD, 2016 WL 6650389, at *6 (N.D. Cal. Nov. 10, 2016) ("[T]he adequacy of a FOIA
13 search is generally determined not by the fruits of the search, but by the appropriateness of
14 the methods used to carry out the search") (citation omitted); *Iturralde v. Comptroller*
15 *of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003) ("[I]t is long settled that the failure of an
16 agency to turn up one specific document in its search does not alone render a search
17 inadequate.").

18 Moreover, the Court notes that though there is evidence that the USAO may have
19 destroyed certain records pursuant to its own internal policies, this does not render the
20 search at issue unreasonable as there is no evidence of bad faith. *See Cal-Almond, Inc. v.*
21 *U.S. Dep't of Agriculture*, 960 F.2d 105, 109 (9th Cir. 1992) (holding that "[a]bsent a
22 showing that the government has improperly destroyed 'agency records,' FOIA does not
23 require [] records to be recreated."); *see also Kissinger v. Reporters Comm. for Freedom*
24 *of the Press*, 445 U.S. 136, 152 (1980) (holding that FOIA "does not obligate agencies to
25 create or retain documents; it only obligates them to provide access to those which it in fact
26 has created and retained."). Further, courts have held that they cannot order agencies to
27 "make amends for any documents destroyed prior to the request because a FOIA request
28

1 pertains only to material in the possession of the agency at the time of the request.” *Jones*
2 *v. F.B.I.*, 41 F.3d 238, 249 (6th Cir. 1994).

3 Based on the foregoing, the Court concludes that Respondents have satisfied their
4 first burden and demonstrated that they conducted adequate and reasonable searches in
5 response to Estevez’s various FOIA requests. *See Lahr*, 569 F.3d at 988–89 (finding
6 declarations that described what files, paper records, and computer systems searched to be
7 “sufficient to support the conclusion that the[] searches were reasonably calculated to
8 uncover responsive records and were therefore adequate for the purposes of FOIA.”).

9 Though Respondents have met their first burden to demonstrate that their search was
10 sufficient, Estevez has not met his burden in establishing that there is an absence of a
11 genuine issue of material fact that Respondents’ search was inadequate. In Estevez’s
12 motion for summary judgment he makes limited conclusory statements including that
13 Respondents are illegally withholding documents and that Respondents failed to
14 adequately search for the documents he seeks. (Doc. No. 45 at 12–13.) Regrettably, these
15 barren and completely unsupported allegations do not provide any facts to support
16 Estevez’s argument that the searches performed by Respondents were lacking, deficient,
17 or done in bad faith. For instance, Estevez does not attempt to provide evidence that
18 Respondents did not search all the locations requested or that Respondents purposefully
19 hid documents relevant to his FOIA requests. The Court reminds Estevez that as the
20 moving party on summary judgment, he “bears the burden of showing that there is no
21 material factual dispute.” *Mace v. Ocwen Loan Servicing, LLC*, 252 F. Supp. 3d 941, 945
22 (N.D. Cal. 2017). Estevez’s motion for summary judgment, as whole, completely fails to
23 meet this standard. Accordingly, Estevez’s motion for summary judgment is **DENIED**.

24 B. Respondents’ Justifications for Redaction or Withholding

25 The next step at summary judgment in a FOIA case, as explained previously, is that
26 the agency, through detailed affidavits, must demonstrate that the information withheld
27 “logically falls within the claimed exemptions.” *Minier*, 88 F.3d at 800 (citation omitted).

1 The Court will take the BOP and the USMS' justifications in turn.⁴

2 *i. Federal Bureau of Prison*

3 After conducting their search, the BOP determined that there were ninety-six pages
4 that pertained to Estevez's FOIA request. (Doc. No. 52-1 at 18; Doc. No. 55 at 9.) Of the
5 ninety-six pages, thirty pages were redacted, and ten pages were withheld. (*Id.*) Estevez's
6 appeal only challenged the ten pages that were completely withheld under exemptions 5
7 U.S.C. § 552(b)(7)(C) and (b)(7)(F).⁵ (*Id.*; Doc. No. 42-2 at 8.) The Court notes that as of
8 the date that Respondents filed their cross-motion for summary judgment, they have
9 determined, upon further review, that nine of the ten pages withheld in their entirety may
10 be produced to Estevez with only certain information redacted pursuant to the same
11 exemptions referenced above.⁶ (Doc. No. 52-1 at 18.)

12 The two exemptions employed by the BOP hold exceptions for "records or
13 information compiled for law enforcement purposes, but only to the extent that the
14 production of such law enforcement records or information . . . (C) could reasonably be
15 expected to constitute an unwarranted invasion of personal privacy . . . or (F) could
16 reasonably be expected to endanger the life or physical safety of any individual." 5 U.S.C.
17 § 552(b)(7)(C), (F).

18

19 ⁴ As the USAO's search did not turn up any relevant documents, there were no documents
20 withheld. Thus, the Court need not analyze whether the USAO's justifications for
withholding were warranted.

21 ⁵ Respondents contend that as Estevez only appealed to the OIP in regards to the ten pages
22 that were completely withheld that he has only exhausted his administrative remedies as to
23 these ten pages. (Doc. No. 52-1 at 18.) However, the Court notes that the Ninth Circuit has
24 held that "FOIA does not expressly require exhaustion, much less label it jurisdictional,
25 nor does FOIA include exhaustion in its jurisdiction-granting provision. [] Therefore,
exhaustion cannot be considered a jurisdictional requirement." *Yagman v. Pompeo*, 868
26 F.3d 1075, 1083 (9th Cir. 2017). However, as Estevez's appeal only took issue with the ten
pages withheld in their entirety, the Court will devote its analysis to these specific pages.

27 ⁶ Respondents stated that they would provide the nine redacted pages to Estevez along with
28 their motion, as well as file the documents with the Court under seal. (Doc. No. 52-1 at
18.) The pages were filed under seal on January 4, 2018, (Doc. No. 69), and Estevez states
that he has received the nine redacted pages, (Doc. No. 55 at 9).

a. Records Compiled for Law Enforcement Purposes

The threshold consideration whenever an agency asserts the Law Enforcement Purposes Exemption is “whether the agency may exercise a law enforcement function,” a determination which turns on an examination of the agency itself. *Church of Scientology Int’l v. U.S. Internal Revenue Serv.*, 995 F.2d 916, 919 (9th Cir. 1993) (citation omitted). An agency with a “clear law enforcement mandate” need only establish a “rational nexus” between the enforcement of the federal law and the document for which exemption is claimed. *Rosenfeld v. U.S. Dep’t of Justice*, 57 F.3d 803, 808 (9th Cir. 1995) (citation omitted).

Here, Ms. Carl testifies through her declaration that the BOP has a clear law enforcement mandate as the BOP's principal function is the housing of pretrial or presentence inmates pending criminal proceedings along with the execution of sentences in criminal cases. (Carl Decl. ¶ 12 (citing 5 U.S.C. § 552a(j)(2) (finding that it is a Department of Justice component that has as its principal function the enforcement of criminal laws includ[ing] correctional authorities).)) Further, by statute, Ms. Carl testified that the BOP is tasked with, among other things, the management and regulation of all federal penal and correctional institutions. *Id.* (citing 18 U.S.C. § 4042(a)(1).) Additionally, the BOP is tasked with the law enforcement mission of protecting inmates, staff, and the community, including victims of crime. *Id.* (citing 18 U.S.C. §§ 3050, 4042.)

In sum, the Court finds that Ms. Carl's declaration establishes that the BOP's function and its purpose in compiling the documents at issue fall within a cognizable law enforcement mandate.

b. An Unwarranted Invasion of Personal Privacy

When a FOIA request implicates the areas of privacy identified by a FOIA exemption, “[t]he statutory direction that the information not be released if the invasion of personal privacy could reasonably be expected to be unwarranted requires the courts to balance the competing interests in privacy and disclosure.” *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). In conducting this balance, courts apply a

1 three-step test. First, the court must determine whether the “disclosure implicates a
2 personal privacy interest that is nontrivial, or . . . more than [] *de minimis*.” *Yonemoto v.*
3 *Dep’t of Veterans Affairs*, 686 F.3d 681, 693 (9th Cir. 2012) (internal citation and
4 quotations omitted), *overruled on other grounds by Animal Legal Def. Fund v. U.S. Food*
5 *& Drug Admin.*, 836 F.3d 987 (9th Cir. 2016). Second, if the right privacy interest is at
6 stake, then the requester “must show that the public interest sought to be advanced is a
7 significant one . . . and that the information is likely to advance that interest.” *Favish*, 541
8 U.S. at 158. If both factors are present, the court must then balance the two. *Lahr*, 569 F.3d
9 at 973.

10 Here, Ms. Carl’s declaration lists off the various reasons for why each of the ten
11 pages were withheld in their entirety. Specifically, pages 6, 7, 21, 29, 50, 53, and 57 were
12 withheld as the documents included the names and register numbers of other inmates and
13 the names and telephone numbers of staff members that were involved in the transportation
14 of Estevez to federal custody. (Carl Decl. ¶¶ 14–17, 19, 20, 22.)

15 The remaining three pages—pages 33, 55, and 78—were withheld for various other
16 reasons: (1) Page 33 was withheld as it stated Estevez’s state charge on an application for
17 a writ of habeas corpus involving the transport of Estevez to and from state and federal
18 custody; (2) Page 55 was withheld as it contained an inmate injury assessment and follow-
19 up report prepared by medical staff of an inmate involved in an altercation with Estevez;
20 and (3) Page 78 is a copy of Estevez’s Inmate Screening form, which contains information
21 including gang affiliations and the name of the staff member conducting the intake
22 interview form. (*Id.* ¶¶ 18, 21, 23.)⁷

23 Here, the evidence submitted by Respondents establishes that the disclosures would
24 give rise to significant privacy concerns. *See Painting Indus. Of Haw. Mkt. Recovery Fund*
25 *v. U.S. Dep’t of Air Force*, 26 F.3d 1479, 1482 (9th Cir. 1994) (“We must evaluate both

27
28 ⁷ The Court again highlights that nine of these ten pages have now been provided to Estevez
in redacted form with only one page, page fifty-five, still being withheld in its entirety.

1 the public benefit and the potential invasion of privacy by looking at the nature of the
2 information requested and the uses to which it *could* be put if released to *any* member of
3 the public.”). Specifically, the disclosures that Estevez seeks would identify inmates who
4 were involved in altercations with Estevez while incarcerated, their register numbers, and
5 in one case the medical history of another individual. Each of these individuals has a
6 privacy interest in this “information concerning his or her person” and these “personal
7 details” about himself or herself. *Reporters Comm. for Freedom of the Press*, 489 U.S. at
8 763; *see also Favish*, 541 U.S. at 166 (finding that law enforcement documents that
9 contained information about persons interviewed as witnesses were to be given protection
10 as “intimate personal data” as the “public [did] not have a general right of access [to the
11 documents] in the ordinary course.”).

12 Further, the document that redacted Estevez’s grand jury charge may be deemed a
13 disclosure that would subject Estevez to “possible embarrassment, harassment, or the risk
14 of mistreatment [which] constitute[s] nontrivial intrusions into privacy.” *Cameranesi v.*
15 *United States Dep’t of Def.*, 856 F.3d 626, 638 (9th Cir. 2017). In the same vein, the
16 redactions present in the inmate injury assessment form and Estevez’s inmate screening
17 form prevents any possibility of persecution or stigma against Estevez or the other inmate
18 for possible gang affiliations or for any risk of reprisal—exactly the sort of risks that courts
19 have also recognized as nontrivial. *See id.* at 639 (“We have similarly held that the potential
20 for harassment from third parties gives rise to a cognizable privacy interest.”).

21 Accordingly, the Court concludes that Ms. Carl’s declaration is sufficient to carry
22 the agencies burden in demonstrating that the exemptions were narrowly applied and have
23 a rational nexus to a law enforcement purpose. *Rosenfeld*, 57 F.3d at 809.

24 The Court now turns to step two—the balancing of the privacy interests identified at
25 the first step against the public interest favoring disclosure. At this point, the requester
26 bears the burden of showing that the (1) “public interest sought to be advanced is a
27 significant one” and (2) that the information is “likely to advance the interest.” *Favish*, 541
28 U.S. at 158. In determining the significance of the public interest, the primary inquiry under

1 the “FOIA balancing analysis is the extent to which disclosure of the information sought
2 would she[d] light on an agency’s performance of its statutory duties or otherwise let
3 citizens know what their government is up to.” *Bibles v. Or. Nat. Desert Ass’n*, 519 U.S.
4 355, 355–56 (1997) (per curiam) (internal quotation marks omitted).

5 Estevez asserts that the information he seeks will assist him as well as shed light on
6 the agency’s performances of its statutory duties and will let “citizens know what their
7 government is up to.” (Doc. No. 55 at 14.) Further, Estevez contends that foreign
8 government officials were murdered, thus his FOIA request is meant “to pierce the veil of
9 administrative secrecy” and would serve public interest as there is evidence that the
10 agencies are engaged in illegal activity. (*Id.*)

11 Altogether, Estevez’s arguments are simply statements that repeat the law with no
12 factual allegations or evidence to support his theories. Further, Estevez does not clearly
13 establish what specific public interest his request is serving. *See Ray*, 502 U.S. at 178
14 (highlighting that the public interest in that case was “knowing whether the State
15 Department ha[d] adequately monitored Haiti’s compliance with its promise not to
16 prosecute returnees”). Most notably, Estevez’s conclusory statements fail to
17 demonstrate that the redacted information, which includes the identities of other inmates
18 and the identifying information of employees, would “add significantly to the already
19 available information concerning the manner in which [the agency] has performed its
20 statutory duties.” *Cameranesi*, 856 F.3d at 640 (internal quotation marks omitted); *see also*
21 *Forest Serv. Emp. For Envlt. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1024–25 (9th Cir.
22 2008) (holding that disclosure of the identities would not “contribut[e] significantly to
23 public understanding of the operations or activities of the government.”) (citation omitted).

24 Estevez’s letter to the BOP requested copies of all documents pertaining to him.
25 (Doc. No. 42-2 at 3.) In response, Estevez was provided with all documents contained in
26 his inmate file with some pages withheld in their entirety and others with minor redactions.
27 Estevez then argues in a conclusory manner that the public interest lies in piercing the veil
28 of administrative secrecy. However, as the Court sees it, the veil of administrative secrecy

1 has been pierced in this instant matter as all documents pertaining to Estevez's Grand Jury
2 case and his transfer from state to federal prison have been given to him. Further, through
3 this litigation process, nine of the ten documents withheld in their entirety have now been
4 provided to Estevez with only minor redactions. As to the one page still withheld in its
5 entirety, page 55, the Court finds that the page could not be redacted as the entire document
6 related to an injury assessment of an inmate involved in an altercation with Estevez. (Carl
7 Decl. ¶ 21 (*see Wiener v. F.B.I*, 943 F.2d 972, 988 (9th Cir. 1991) (holding that a district
8 court must making a finding on "segregability, or the lack thereof, with respect to [a
9 withheld] document.") (internal quotation marks and citation omitted)).

10 In sum, disclosing inmate names and register numbers, medical information of an
11 inmate involved in an altercation with Estevez, and employee names and telephone
12 numbers risks subjecting these individuals to significant invasions of personal privacy.
13 This invasion of privacy is not, in this case, outweighed by any public interest alleged by
14 Estevez. As a result, Respondents' motion for summary judgment on this point is
15 **GRANTED.**

16 *ii. United States Marshal Service*

17 In a letter dated April 18, 2015, Estevez requested from the USMS "documents
18 pertaining to [him] in the above entitled case [99GJ0131] . . ." (Bordley Decl. ¶ 2.) Of the
19 two documents found to be responsive to Estevez's FOIA demand, USMS released one
20 page in full while the other page was released with redactions. (*Id.* ¶ 7.) USMS redacted
21 this document under FOIA exemption (b)(7)(C), already described in great length above.
22 (*Id.*)

23 *a. Records Compiled for Law Enforcement Purposes*

24 Respondents argue that the USMS is an agency with a clear law enforcement
25 mandate. (Doc. No. 52-1 at 25–26.) Accordingly, Respondents need only demonstrate that
26 there is a "rational nexus" between the law enforcement duties and the document that was
27 withheld under exemption 7. (*Id.*) The Court agrees.

28 As explained in *Strolberg v. U.S. Marshals Serv.*, 350 F. App'x 113, 114–15 (9th

1 Cir. 2009) (Pregerson, J., dissenting), the protection of the federal judiciary is the
2 responsibility of the USMS, including being authorized to provide courtroom security for
3 the federal judiciary. *See* 28 U.S.C. § 566(e)(1)(A) (“The [USMS] is authorized to-(A)
4 provide for the personal protection of Federal jurists, court officers, witnesses, and other
5 threatened persons in the interests of justice where criminal intimidation impedes on the
6 functioning of the judicial process or any other official proceeding”); *see also* 28
7 C.F.R. § 0.112(c) (“The Director, [USMS], is authorized to deputize . . . [s]elected
8 employees of private security companies [to provide] courtroom security for the Federal
9 judiciary”). Further, USMS materials containing names and initials of law
10 enforcement officers and the register numbers of certain prisoners are considered compiled
11 for law enforcement purposes as they are connected to the “receipt, processing,
12 safekeeping, and transportation” of prisoners while in the USMS’ custody. *See Jimenez v.*
13 *F.B.I.*, 938 F. Supp. 21, 29 (D.C. Cir. 1996).

14 b. An Unwarranted Invasion of Privacy

15 Next, the Court will balance the privacy interests in maintaining the confidentiality
16 of the redacted one page against the public interest in its release.

17 Mr. Bordley states that the one page at issue redacted the names of third party
18 individuals, specifically other prisoners. (Bordley Decl. ¶ 8.) For the same reasons *supra*
19 pp. 14–15, the Court concludes that Respondents have satisfied their burden of
20 demonstrating that the disclosure of the third-party name would implicate his or her
21 personal privacy as it would affect either the individual’s “control of information
22 concerning his or her person,” *Reporters Comm. for Freedom of the Press*, 489 U.S. at 763,
23 or constitute a “public intrusion[] long deemed impermissible under the common law and
24 cultural traditions.” *Favish*, 541 U.S. at 158; *see also Tuffly v. U.S. Dep’t of Homeland*
25 *Security*, 870 F.3d 1086, 1094 (9th Cir. 2017) (finding the disclosure of the “names of the
26 released detainees would give rise to significant privacy concerns[]” under FOIA).

27 The Court must now evaluate the public interest in obtaining the disclosure.
28 Unfortunately, after carefully examining Estevez’s opposition brief, the Court finds that

1 the only public interest arguments he makes are those that this Court, pursuant to this Order
2 *supra* p. 16, has already deemed insufficient, conclusory, and meritless. Thus, as already
3 concluded by the Court, Estevez's various contentions such as shedding light on an
4 agency's performance and seeking to pierce the veil of administrative secrecy are not
5 contentions that demonstrate how disclosure of the names of the third-party individuals is
6 a "public interest" or how the information will likely "advance that interest." *Favish*, 541
7 U.S. at 172. Estevez has now been provided with two documents one of which is the USMS
8 Form 129, Individual Custody/Detention Report, which tracks a prisoner's custody,
9 movements, court appearances, and medical care providers. (Bordley Decl. ¶ 5.) He
10 therefore now possesses relevant information regarding his FOIA request—the names of
11 the third party inmates would do nothing to further illuminate any of the USMS' actions in
12 relation to Estevez's grand jury case number 99GJ0131.

13 Presently, Estevez has not provided any evidence to demonstrate that the public's
14 interest only supports disclosure of the withheld names or that the disclosure is likely to
15 advance the public's ability to evaluate future government actions. As a result, the Court
16 need not balance the public interest with the private interests mentioned above. Thus,
17 Respondents' motion for summary judgment on this matter is **GRANTED**.

18 In sum, Estevez's motion for summary judgment has put the Court to the task of
19 balancing the privacy interests of other citizens with the public's right to government
20 access. Here, the BOP, USMS, and USAO have demonstrated through nonconclusory
21 affidavits that their searches were adequate. Moreover, the BOP and USMS have
22 established that disclosure of the redacted information would subject individuals to
23 significant invasions of personal privacy or expose Estevez and other inmates to stigma,
24 harassment, or embarrassment. These privacy interests listed by the BOP and USMS are
25 more than de minimis and are not outweighed by any public interest. Accordingly, the
26 Court **GRANTS** Respondents' motion for summary judgment on Estevez's FOIA cause of
27 action.

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1 C. Privacy Act

2 Estevez also brings a cause of action under the Privacy Act arguing that all of the
3 Respondents violated his rights under the Constitution by refusing to do an adequate
4 search. (Doc. No. 33 at 11–12.) Respondents claim that Estevez’s requests to the BOP and
5 the USMS were pursuant to FOIA only and his request to the USAO did not specify which
6 statute his request was made under. (Doc. No. 52-1 at 28.) Thus, based on this alone,
7 Respondents’ motion for summary judgment should be granted. (*Id.*) The Court agrees.

8 Despite Estevez’s complaint that argues that he pursues records under the Privacy
9 Act, the record demonstrates the opposite. In fact, looking to the exhibits provided by
10 Estevez himself, the Court points out that his letter dated July 8, 2014, specifically
11 requested documents under FOIA and makes no reference to the Privacy Act. (Doc. No.
12 33 at 33.) Identical to this letter is Estevez’s letter to the USMS, attached as Exhibit I to
13 his motion, which states that he is requesting documents under FOIA. (*Id.* at 42; Doc. No.
14 42-1 at 1.) The Court notes that Mr. Bordley’s declaration specifically states that Estevez
15 did not make a Privacy Act request to the USMS. (Bordley Decl. ¶ 6.) However, to ensure
16 maximum access to records, his request was analyzed under the Privacy Act. (*Id.*)
17 Consequently, as Estevez never submitted a Privacy Act request to any of the agencies
18 relevant to the instant matter, the Court lacks jurisdiction over this cause of action. *See*
19 *Bosworth v. United States*, No. CV 14-0283 DMG (SS), 2016 WL 5662045, at *4 (C.D.
20 Cal. 2016) (“To state a Privacy Act claim, the plaintiff must show (1) that a request for
21 records was made; (2) that the request was denied; and (3) that such a denial or failure to
22 act was improper under the Privacy Act.”) (internal quotation marks and citation omitted).

23 Moreover, though the Court need not reach this point, the Court notes that under the
24 Privacy Act “[i]ndividuals are permitted to access their records and request amendments
25 to them.” *Nat’l Aeronautics and Space Admin. v. Nelson*, 562 U.S. 134, 142 (2011) (citing
26 5 U.S.C. § 552a(d)(1), (2)). However, an exception to this rule is when an agency exempts
27 any system of records if the system of records is –

28 (2) maintained by an agency or component thereof which

1 performs as its principal function any activity pertaining to the
2 enforcement of criminal laws, including police efforts to prevent,
3 control, or reduce crime or to apprehend criminals, and the
4 activities of prosecutors, courts, correctional, probation, pardon,
5 or parole authorities, and which consists of (A) information
6 compiled for the purpose of identifying individual criminal
7 offenders and alleged offenders and consisting only of
8 identifying data and notations of arrests . . . (C) reports
through release from supervision.

9 5 U.S.C. 552a(j)(2).

10 As already explained in great detail, *supra* pp. 11–19, the Court has already
11 established that Respondents collected the information at issue under a clear law
12 enforcement mandate. Further, the foregoing statute clearly provides exemptions to the
13 Privacy Act for records stored in the Inmate Central Records system and records stored in
14 the Population Management/Prisoner Tracking System, both of which are systems that
15 were searched on Estevez’s behalf for his various FOIA requests. *See Gordon v. F.B.I.*,
16 388 F. Supp. 2d 1028, 1046 (N.D. Cal. 2005) (“The Act also denies an individual access
17 to records maintained by an agency whose principle function is the enforcement of criminal
18 laws.”).

19 Thus, based on the foregoing, the Court **GRANTS** Respondents’ motion for
20 summary judgment on Estevez’s Privacy Act claim.⁸

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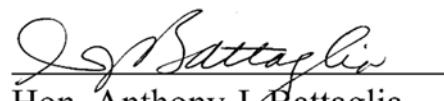
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26 ⁸ Estevez’s complaint and his motion for summary judgment alleges a third cause of action
27 under the California Public Records Act. (Doc. No. 33 ¶ 19; Doc. No. 45 at 9.) However,
28 no further mention of this cause of action is made nor is any evidence produced to support
this claim.

1 **IV. CONCLUSION**

2 In light of the foregoing, the Court **DENIES** Estevez's motion for summary
3 judgment and **GRANTS** Respondents' cross-motion for summary judgment in its entirety.
4 Accordingly, the Court **DIRECTS** the Clerk of Court to **CLOSE** this case.

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6 **IT IS SO ORDERED.**

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8 Dated: January 22, 2018


9 Hon. Anthony J. Battaglia
10 United States District Judge

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